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April 25, 1997

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PLEASE

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Mr. David Waddell
Executive Secretary
Tennessee Regulatory Authority
460 James Robertson Parkway
Nashville, TN 37201

Re: **BellSouth Telecommunications, Inc.'s Entry Into Long Distance (Interlata) Service
In Tennessee Pursuant To Section 271 Of Telecommunications Act of 1996**
Docket No. 97-00309

Dear Mr. Waddell:

Enclosed for filing are the original and thirteen copies of the Brief of Time Warner Communications of the Mid-South, L.P. on the Interpretation of Section 271(c)(1)(A) & (B).

Very truly yours,

FARRIS, MATHEWS, GILMAN,
BRANAN & HELLEN, P.L.C.

BY: Charles B. Welch, Jr.
Charles B. Welch, Jr.

CBW,jr:lh
Enclosures
cc: All Counsels of Record

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BELLSOUTH TELECOMMUNICATIONS,]
INC.'S ENTRY INTO LONG DISTANCE]
(INTERLATA) SERVICE IN TENNESSEE]
PURSUANT TO SECTION 271 OF]
TELECOMMUNICATIONS ACT OF 1996]

Docket No. 97-00309

BRIEF OF TIME WARNER COMMUNICATIONS OF THE MID-SOUTH, L.P.
ON THE INTERPRETATION OF SECTION 271(c)(1)(A) & (B)

I. INTRODUCTION

Pursuant to the Status Conference held in this matter on April 3, 1997, Director Melvin J. Malone presiding as hearing Officer, Time Warner Communications of the Mid-South, L.P. ("Time Warner") provides this brief of law and argument concerning the availability of 47 U.S.C. 271(c)(1)(A) and (B) to BellSouth Telecommunications, Inc. ("BellSouth") in its application for entry into long distance, interlata service markets in Tennessee. BellSouth has indicated that its application will be submitted pursuant to 47 U.S.C. 271(c)(1)(B) ("Track B"). Consistent with Track B, BellSouth anticipates filing a statement of generally available terms offered to provide access and interconnection to its network facilities on June 6, 1997. This brief addresses the question of whether BellSouth is restricted in its application to the requirements of 47 U.S.C. 271(c)(1)(A) ("Track A").

II. THE STATEMENT OF GENERALLY AVAILABLE TERMS IS NOT AVAILABLE TO BELL SOUTH FOR PURPOSES OF SECTION 271 COMPLIANCE, AND SHOULD NOT BE CONSIDERED BY THE TENNESSEE REGULATORY AUTHORITY ("TRA") FOR THAT PURPOSE.

The Telecommunications Act of 1996, 47 U.S.C. 151, et. seq. (the "Act"), defines the conditions under which a regional Bell operating company, such as BellSouth, may enter the in-region interlata market. Under 47 U.S.C. Section 271(c)(1)(A), only if the requirements of Track A are not met because competitive local exchange providers have not requested interconnection, can BellSouth seek to comply with the Track B requirements in 47 U.S.C. Section 271(c)(1)(B). BellSouth is not given a choice of pursuing either Track A or B at its option. Given the Act's fundamental commitment to the development of local exchange competition, Congress has clearly mandated that Track A be pursued since it would result in the creation of facilities-based competition. Only the inaction of competitive providers permits BellSouth to pursue Track B. Since competitive providers have sought interconnection with BellSouth under Track A, the Statement under Track B is unavailable to BellSouth in Tennessee.

A. The Plain Language Of Section 271 Is Clear That An Application, Based On A Statement Of Generally Available Terms Is Not Available To BellSouth.

Section 271(c)(1)(A) defines the process to determine whether the interlata relief requirements are satisfied if an interconnection agreement is reached between BellSouth and a competing facilities-based carrier. Specifically, subparagraph (c)(1)(A) states in part:

PRESENCE OF A FACILITIES-BASED COMPETITOR. A Bell operating company meets the requirement of this subparagraph *if it has entered into one or more binding agreements* that have been approved under Section 252 specifying the terms and conditions under which the Bell operating company is providing access and interconnection to its network facilities of one or more unaffiliated competing providers of telephone exchange service.... (Emphasis added).

In contrast, Section 271(c)(1)(B) demonstrates that only if BellSouth has not entered into a binding interconnection agreement with one or more unaffiliated local exchange competitors, or has not been requested to do so by one or more competitive carriers, can BellSouth proceed to file a Statement of Generally Available Terms as a means of demonstrating that it has complied with Section 271. Section 271(c)(1)(B) states in part:

FAILURE TO REQUEST ACCESS. A Bell operating company meets the requirements of this subparagraph if, after 10 months after the date of enactment of the Telecommunications Act of 1996, *no such provider has requested the access and interconnection described in subparagraph (A)* before the date which is 3 months before the date the company makes its applications under subsection (d)(1), and a statement of the terms and conditions that the company generally offers to provide such access and interconnection has been approved or permitted to take effect by the state commission under Section 252(f). (Emphasis added).

Under the express terms of the statute, if BellSouth has received a request for access and interconnection by a competing provider, BellSouth must pursue Track A compliance, including reaching and implementing an interconnection agreement with a facilities-based carrier in order to satisfy Section 271. It may not pursue Track B in

these circumstances. Only if no request for interconnection has been made, or an agreement reached within the time frame prescribed by Section 271, may a Bell operating company proceed under Track B to obtain permission from the state commission to provide access and interconnection telecommunications services by filing a Statement of Generally Available Terms.

In Tennessee, BellSouth has received numerous requests for interconnection by competing providers of local exchange service, such as AT&T, MCI, Sprint and Time Warner, within the time frame required by Section 271. In addition, BellSouth has actually entered into interconnection agreements, pursuant to which, facilities-based local exchange services are being provided to business customers. No competing provider is currently offering services to residential customers, although they are authorized to provide such services. Consequently, only Track A is available to BellSouth to pursue to obtain interlata relief. Notwithstanding this plain language of Section 271, BellSouth has indicated it will ignore the requirements of Track A by attempting to submit its application under Track B. As the Act and Conference Report unequivocally state, the purpose for the Statement is to allow BellSouth into the interlata market if, *and only if*, BellSouth has *not* received a request for interconnection from a facilities-based carrier under Track A. As such, BellSouth's Statement cannot be used as evidence that it has fulfilled its obligation under Section 271 of the Act.

B. Not Only The Statutory Language, But The Legislative Intent Demonstrate That Track B Is Unavailable To BellSouth.

The Conference Committee Report is consistent with the statutory language in demonstrating that only Track A, and not Track B, is available to BellSouth. Regarding Section 271(c)(1)(A) the Conference Report, states in part:

In addition to complying with the specific interconnection requirements under new Section 271(c)(2), a BOC must satisfy the "in-region" test by virtue of the *presence of a facilities-based competitor* or competitors under new Section 271(c)(1)(A), or by *the failure of a facilities-based competitor to request access or interconnection*. (Emphasis added). (Conference Report, New Section 271, p. 147).

In contrast, when the Conference Report discusses the purpose and intent of Section 271(c)(1)(B), it acknowledges that:

New Section 271(c)(1)(B) . . . is intended to ensure that a BOC is not effectively prevented from seeking entry into the interlata services market simply because no facilities-based competitor that meets the criteria set out in new Section 271(c)(1)(A) has sought to enter the market. The conference agreement stipulates that a BOC make seek entry . . . *provided no qualifying facilities-based competitor has requested access and interconnection under new Section 251*. (Emphasis added). (*Id.*, at p. 148).

The Conference Report conclusively demonstrates that Congress intended, whenever possible, to use requests for interconnection and interconnection arrangements with competing facilities-based carriers to satisfy Section 271. Congress also plainly commanded that a Statement of Generally Available Terms is a default process which is not relevant and serves no purpose if requests for interconnection have been submitted. Since BellSouth has interconnection agreements

with competing providers, the TRA is compelled to conclude that Section 271(c)(1)(A) applies under these circumstances.

Moreover, the FCC agrees that Section 271(c)(1)(A) supersedes Section 271(c)(1)(B). In its order in Docket No. 96-325, the FCC concluded:

BOC statements of generally available terms are relevant where a BOC seeks to provide in-region interlata services, *and the BOC has not negotiated or arbitrated an agreement.* Therefore, such statements are to some extent *a substitute for an agreement for interconnection, services, or access to unbundled elements.* (Emphasis added). (*In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, FCC Docket No. 96-325, Order, August 8, 1996, p.65).

Based on the clear statutory language and legislative history of the Act, and the interpretation of the FCC, Track B is not available to BellSouth and a Statement of Generally Available Term is irrelevant to the Section 271 compliance in Tennessee.

C. The Interconnection Agreements Between BellSouth And Competing, Certified Providers In Tennessee Are The Type Of Agreements Contemplated By Section 271.

The TRA has approved interconnection agreements under Sections 251 and 252 of the Telecommunications Act of 1996 between BellSouth and a number of competing providers. These agreements, on their face, are the type of agreements with facilities-based carriers envisioned under Section 271. As the Conference Report indicated in describing the Congressional intent to promote such agreements:

Meaningful facilities-based competition is possible, given that cable services are available to more than 95% of US homes. Some of the initial forays of cable companies into the field of local telephone therefore hold the premise of

providing the sort of local residential competition that has consistently been contemplated. *For example, large, well-established companies such as Time Warner and Jones Intercable are actively pursuing plans to offer local telephone service in significant markets. (Emphasis added).* (Conference Report, New Section 271, p. 148).

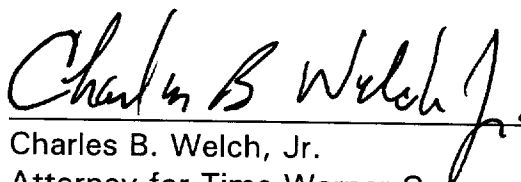
The Conference Report, however, instructs that the state commission must determine whether the agreement is "operational," and not simply signed, in order to satisfy Track A under Section 271. According to the Report, "[t]he requirement that the BOC is providing access and interconnection means that the competitor has *implemented* the agreement and the competitor is *operational*." (*Id.*)

In Tennessee, binding agreements exist. Competing providers are currently providing switched local exchange services to business customers, but they are not currently providing services to residential customers pursuant to the terms of their interconnection agreements with BellSouth. Because these agreements exist, BellSouth is bound by the provisions of Track A. Moreover, BellSouth cannot satisfy Section 271 at this time unless one of these agreements with a competitive provider, is deemed implemented or operational. BellSouth is entitled to interlata relief, when it can demonstrate compliance with Section 271. BellSouth cannot circumvent this Congressional determination by trying to comply with Track B. The TRA is under no obligation to assist BellSouth in that effort.

CONCLUSION

For the foregoing reasons, Time Warner urges the TRA to conclude that only Track A is available to BellSouth in its application to the FCC for entry in the interlata service markets and that its statement of generally available terms should not be considered for the purpose of Section 271 compliance.

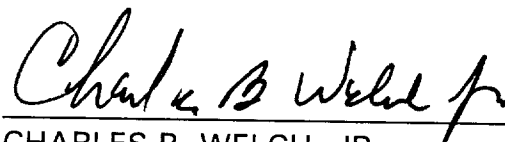
Dated this 25th day of April, 1997.



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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing has been mailed by U. S. First Class mail to all counsels of record on this the 25th day of April, 1997.



CHARLES B. WELCH, JR.